

THE WATCHDOG

A Periodic Newsletter from
The Office of the United States Trustee - Region 16

August 16, 2002
Issue No. 10

As the economy worsens, we see how essential our unique bankruptcy system is in this country, and how many individuals and corporations are helped through these laws. It is all the more alarming that there continues to be significant abuse of the law in this district and elsewhere. With filings rising, my office is redoubling its efforts to stop the abuse and maintain bankruptcy for those honest debtors who need it. By policing the abuse and providing guidance on how to proceed properly in bankruptcy, we continue to carry out the mission of the U.S. Trustee Program. This newsletter details just some of the many actions we have taken this past quarter in pursuit of that mission.

While this newsletter concentrates heavily on those cases where there was abuse, let us not forget the many dedicated trustees, attorneys, and other professionals who work hard to make the system work the way it was intended. I especially commend those attorneys who volunteer their time in the various pro bono projects around the district.

Maureen A. Tighe
United States Trustee

PETITION PREPARER GUIDELINES ISSUED

The United States Trustee has issued Bankruptcy Petition Preparer Guidelines for Region 16. You may obtain a copy of the guidelines by calling the office or by logging on to our web site at: www.usdoj.gov/ust/r16. These Guidelines are intended to provide clear guidance to both debtors and bankruptcy petition preparers as to what non-attorney bankruptcy petition preparers in this district are allowed to do.

The United States Trustee will hold four informational sessions this fall to answer questions about these Guidelines and detail how a bankruptcy petition preparer can comply with 11 U.S.C. § 110 and applicable state law. These sessions should be educational for all non-attorney bankruptcy petition preparers on the subject of how to avoid violating federal and state law in connection with bankruptcy document preparation. These sessions will not provide training on any bankruptcy law other than compliance with 11 U.S.C. § 110. They will not teach anyone how to complete bankruptcy petitions or schedules. The sessions will be held in the 341(a) meeting rooms throughout the district as follows:

Wednesday, September 25, 2002 - 10:30 am
411 West Fourth Street, Room 1154, **Santa Ana**

Monday, September 30, 2002 - 10:00 a.m.
21051 Warner Center Lane, Room 105, **Woodland Hills**

Tuesday, October 8, 2002 - 10:30 am
3420 12th Street, Room 100, **Riverside**

Tuesday, October 22, 2002 - 12:00 noon
725 South Figueroa Street, Room 101, **Los Angeles**

As you can see from the news in the next section, any petition preparer who proceeds without complying with these Guidelines risks not only losing his or her fee, but also risks being fined and subject to injunctions.

PETITION PREPARER NEWS

The Hazards of Accepting Filing Fees

Judge Donovan fined petition preparer **Claude Boyd** \$200 and ordered him to return \$125 to the debtor for collecting the bankruptcy filing fee. The debtor had paid Boyd \$525, which included the filing fee. Boyd argued that the filing fee was paid in the form of a money order made payable to the U.S. Bankruptcy Court. The Central District of California judges have generally allowed petition preparers to collect filing fees in the form of money orders payable to the Court. However, in this case, the receipts showed the debtor paid all fees and signed the bankruptcy documents more than two months prior to the filing of the case. As Boyd took control of the documents and funds and delayed filing the Petition, the Court found a Section 110 violation. (Handled by MaryAnne Wilsbacher)

Petition Preparer **Irma Madrid** collected the filing fee from a debtor in cash. Judge Goldberg sanctioned Madrid \$150.

In three cases, petition preparer **Cindy Southwick** failed to disclose her filing fees, for which she obtained cash. Her defense was presented by her husband/lawyer, who claimed that she worked for him, he supervised all her work, and the money went directly to him. He had, however, made no disclosure of this information at the time of filing. Southwick stipulated to an injunction from acting as a petition preparer.

Judge Naugle, based on a motion by the U. S. Trustee and stipulation with the petition preparer, enjoined **Kim Tulypan** from acting as a petition preparer. Tulypan failed to disclose the receipt of the filing fee and provided legal advice to the debtor.

Money Order Kiting

Judge March enjoined petition preparer **James Staats** from directly or indirectly acting as a petition preparer for ten years because of a money order kiting scheme. While the Court has generally allowed preparers to collect a money order payable to the Court, Staats took a money order for filing fees payable to the United States Bankruptcy Court from debtor Maxine Rubin and used it to pay the filing fees for debtor Sandy Selmanson. Staats delayed filing Rubin's Petition until he received a money order for filing fees payable to the Bankruptcy Court from debtor Pamela Atso. Atso's filing fee was used to pay Rubin's filing fee. Staats was also fined under 11 U.S.C. § 110(g) for kiting the filing fees and was ordered to disgorge fees.

Overcharging

Bankruptcy petition preparer **Carlos Aguilar** received \$500 to assist a debtor while only disclosing a receipt of \$200. Judge Naugle fined Aguilar \$300 and enjoined him from acting as a petition preparer.

Nondisclosure

Judge Naugle enjoined **Centro Legal A.Y.U.D.** from acting as a petition preparer. The firm failed to disclose the true amount received from the client, collected the filing fee in cash, and did not appear in court.

Gary Fuller, petition preparer, failed to provide full disclosure regarding fees received. Judge Jury ordered him to disgorge his compensation of \$200, fined him \$250, and enjoined him from acting as a petition preparer.

Judge Jury ordered **Tommy Rayna** to disgorge his \$200 fee and to pay a \$200 fine. She also enjoined Rayna from acting as a petition preparer for failing to provide full disclosure in a bankruptcy. Rayna did not disclose the correct amount of his compensation, failed to provide a copy of the signed documents at time of signing, and collected the filing fee.

Unauthorized Practice of Law

Petition preparer **Richard Hall** used the word "legal" in his advertising and had advised the debtor regarding exemptions and the differences between chapters 7 and 13. Judge Goldberg enjoined Hall from engaging in the unauthorized practice of law and from using the word "legal" in advertisements.

Petition preparer **John Harrison** appeared in Court and admitted to providing advice on exemptions to a debtor and collecting the filing fee. Judge Jury fined him \$25 and enjoined him from engaging in the unauthorized practice of law.

A debtor asked for and obtained advice regarding the selection of exemptions from the petition preparer **Donna Nelson**. Judge Jury enjoined Nelson from engaging in the unauthorized practice of law, fined her \$25, and issued a final warning on the infraction of collecting a filing fee in the preparer's name.

A debtor stated that her petition preparer, **Pat Sager**, had advised her regarding exemptions. Judge Jury enjoined Sager from engaging in the unauthorized practice of law.

Lack of Supervision

Cynthia Roe acted as a petition preparer. A declaration from one client indicated that he had never met with the attorney. The U. S. Trustee filed a motion under § 110 against both Cynthia Roe and the attorney. Judge Goldberg granted this motion and ordered disgorgement of \$150. The Judge also ordered the attorney to meet personally with each client in all cases and threatened that any future failure will result in an injunction from practicing bankruptcy law in the Central District of California.

Injunctions

Debtors in three bankruptcy cases listed **Kathy Khosoravi** as their petition preparer. In each case, Khosoravi indicated the same address in Anaheim, namely, the **Law Center of Luis A. Sabroso**. Earlier this year, the Law Center and several associated individuals entered into a stipulation in which they

agreed to be enjoined from any further involvement in bankruptcies in the Central District of California. Judge Alberts fined Khosoravi \$1,500 for using a false address.

Judge Alberts permanently enjoined **Magaly Mares**, based upon a stipulation, from acting as a petition preparer, sanctioned her, and ordered her to disgorge fees to her client. The Court had previously sanctioned Mares, a law school graduate, in another bankruptcy case. Upon further investigation, the U.S. Trustee discovered that Mares had also used her 3-year-old daughter's name, Bianca Mendiola, on documents she had previously prepared in yet another bankruptcy. The Court ordered sanctions and an injunction in this case as well.

Based on the U.S. Trustee's motion, the Court sanctioned petition preparer **James Merchian** \$1,000 and ordered him to return nearly \$3,000 in fees paid to him by eight clients. In one chapter 7 case, Merchian was identified as the non-attorney providing typing services for a fee of \$200; in fact, he had collected a fee of \$475 for debt counseling and paid \$275 to paralegal Peggy Muse for her preparation of the debtor's bankruptcy papers. In response to the U.S. Trustee's motion under 11 U.S.C. § 110, Merchian also agreed to cease acting as a petition preparer.

An attorney refunded fees to the debtor Celia Carriedo based on Carriedo's complaint regarding petition preparer **Alex Rojas**. In February 1998, petition preparer Alejandro Rojas d/b/a Centro De Asistencia Hispana, Centro De Asistencia, Centro Hispano, and Centro De Servicios Al Hispano, stipulated with the U.S. Trustee to an order permanently enjoining him from preparing bankruptcy papers in the Central District of California. The U.S. Trustee noted in Corriedo's complaint that the addresses for Alejandro Rojas and Alex Rojas were the same, and that Rojas now worked for this attorney. Carriedo had paid \$260 to Alex Rojas for the preparation of bankruptcy papers but Rojas neither prepared the papers nor returned the debtor's money. When the U.S. Trustee contacted the attorney, she and Rojas said that Rojas was being properly supervised, and they agreed to return Carriedo's money.

The U.S. Trustee's office sought fines and a permanent injunction against **Jonathan Donnell**, and his business "Renter's Rights" for the unlicensed practice of law and for collecting court filing fees from a debtor in violation of 11 U.S.C. § 110. The Los Angeles Judicial District of the Superior Court of the State of California, in the context of a wrongful eviction, previously had enjoined Donnell from "the practice of law in any form" unless licensed to do so. The U.S. Trustee's office discovered that Donnell had violated that order in his bankruptcy practice by advising debtors about bankruptcy chapters and exemptions. Judge Mund permanently enjoined Donnell and Renter's Rights from preparing bankruptcy Petitions. The Court also ordered disgorgement of moneys paid to Renter's Rights by the debtor, and imposed a fine of \$500. (Handled by MaryAnne Wilsbacher)

OFFICE RELOCATIONS



The Los Angeles Office Has Moved

New Address: 725 S. Figueroa Street
Suite 2600
Los Angeles, CA 90017

Note: The § 341(a) meetings will continue to be held at the 221 N. Figueroa Street, Room 101 location through September 20, 2002. Thereafter, we will hold them at the new office, in Room 101 (the Lobby level).

The Riverside Office Is Moving

Effective Date: September 20, 2002

New Address: 3685 Main Street, Suite 300
Riverside, CA 92501

All telephone numbers, fax numbers, and e-mail addresses for both offices remain the same as at their previous locations.

DEBTOR I.D. PROGRAM

As of February 18, 2002, the Debtor Identification Program requires all individual debtors to provide to the trustee at the meeting of creditors an original picture identification (ID) and proof of Social Security Number (SSN). Failure to do so may result in dismissal of the case. Permissible forms of ID include a valid state driver's license, government or state-issued picture ID, student ID, military ID, U.S. Passport or legal resident alien card. Proof of SSN includes a Social Security Card, current W-2 form, pay stub, IRS Form 1099, Social Security Administration Report, or other official document which indicates name and SSN.

In addition to checking IDs and SSNs at the § 341(a) meetings, the UST is checking all prior filings and multiple uses of the same SSN shortly after a case is filed. Some of the many cases arising out of these programs follow.

⇒ In the bankruptcy case of Maria Campana, the U.S. Trustee received a complaint indicating that the debtor had used someone else's SSN. The U. S. Trustee requested that the Court issue an order to show cause against both the debtor and her counsel based on the failure to provide the correct SSN on the Petition. Judge Naugle dismissed the case with a 180-day refiling bar and sanctioned the debtor \$500. Counsel sent corrective letters to the credit reporting agencies.

⇒ Judge Naugle granted the U. S. Trustee's application for an order to show cause against debtors Timothy and Christine Robb and their counsel for failure to provide the correct SSN on their Petition. At the hearing on April 9, 2002, the Court sanctioned the debtors \$100.

⇒ The U. S. Trustee sought an order to show cause as to why debtors John and Dawn Robert and their counsel should not be sanctioned for the failure to provide the debtor's correct SSN on the Petition. Judge Jury fined counsel \$150 and ordered a \$300 reduction in fees.

⇒ Another case of using an incorrect SSN is the bankruptcy of Jose and Blanca Romero. In this matter, Judge Jury fined a law firm \$150 and ordered disgorgement of \$300 in fees.

⇒ In the bankruptcy case of Stephen and Meredith Shinn, in lieu of a motion for sanctions, the law firm representing the debtors stipulated to a disgorgement of \$650 of its compensation based on filing this bankruptcy with an incorrect SSN.

⇒ Through the Debtor I.D. Program, the U.S. Trustee discovered that Evelyn Talavera-Elias filed a bankruptcy Petition although she had been granted a discharge in a case commenced within the six years prior to the current filing. The U.S. Trustee moved to dismiss the case for cause under 11 U.S.C. § 707(a), with a prohibition against refiling another chapter 7 Petition for more than eighteen months. Judge Lax granted the U.S. Trustee's motion. (Handled by MaryAnne Wilsbacher)

⇒ Manuel Vargas filed a chapter 7 Petition listing an invalid SSN. At the initial § 341(a) meeting on April 1, 2002, the debtor did not inform the trustee that his SSN was invalid. After the debtor failed to produce evidence of his SSN, the Trustee continued the § 341(a) meeting. The debtor failed to appear at this meeting and the U.S. Trustee filed a complaint seeking denial of discharge based on the debtor's false oaths on his Petition and at the previous § 341(a) meeting. The debtor did not answer the complaint. Judge Ryan signed the default judgment.

ATTORNEY SANCTIONS

Los Angeles

○ Based on the U.S. Trustee's objection, Judge Russell denied the employment of a chapter 11 debtor's counsel and ordered disgorgement of his \$15,000 retainer for failure to properly represent the debtor, which directly led to conversion to chapter 7 six weeks into the case. The attorney's failures to properly represent the debtor included: (i) failure to timely file a cash collateral motion; (ii) failure to seek

court authority for the debtor's financing of insurance premiums; (iii) failure to seek court approval for the debtor's payment of pre-Petition wages post-Petition; (iv) failure to inform the debtor not to pay wages to insiders prior to obtaining court authority for use of cash collateral and complying with the Local Rules and U.S. Trustee's requirements for payment of insiders; and (v) failure to properly advise the debtor as to compliance with various U. S. Trustee requirements. (Handled by Joe Caceres)

○ Following the U. S. Trustee's motion for an accounting and disgorgement, Judge Zurzolo referred an attorney to the Disciplinary Panel of the U.S. Bankruptcy Court. The Court found numerous violations of the California Rules of Professional Conduct, including aiding a non-attorney in the unauthorized practice of law, forming a partnership with a non-attorney for the practice of law, sharing legal fees with a non-attorney, failing to supervise the work of a non-attorney, failing to deposit trust funds properly, allowing his name to be used in a way that permitted a non-attorney to charge an unconscionable fee, and misrepresenting his compensation arrangement to the Court. The Court found that the attorney signed the bankruptcy documents but never met with the debtor, and the attorney allowed a non-attorney to collect money and deposit it in the non-attorney's account. (Handled by Ron Maroko)

Riverside

○ In response to the U.S. Trustee's request for justification of an attorney's fee of \$2,500, the attorney could account for only five hours of work, in part because he had special appearance counsel handle the meeting of creditors. After the U.S. Trustee filed a motion to reduce fees, the attorney disclosed that he had already paid his client \$359 of an unused fee from his trust account. He agreed to repay an additional \$600 to settle the matter.

○ Three attorneys failed to appear for their clients at the meetings of creditors. Upon the U. S. Trustee's motion, Judge Goldberg reduced the attorneys' fees by \$250 in each case.

Santa Ana

○ In a chapter 7 case, the debtor's attorney never met with his clients and spoke with them briefly on only one occasion. Instead, his paralegal, extern, and secretary counseled the debtors about their bankruptcy filings, prepared their bankruptcy pleadings, and harassed the debtors about further payments. Based on these practices, the U.S. Trustee filed a motion seeking disgorgement of the \$800 in counsel fees collected. Judge Ryan sanctioned the attorney \$950 and ordered disgorgement of the full \$800 fee, advising him that he must completely change his practices or he will face even harsher consequences. The U.S. Trustee has sought and received sanctions against the attorney previously for similar practices.



○ An attorney represented a debtor in six related bankruptcy filings but did not disclose several of the previous filings in the current case. The U.S. Trustee filed a motion for dismissal of the case, disgorgement of attorney fees, and sanctions. Judge Ryan dismissed the case on June 6, 2002, sanctioned the attorney \$500 and reduced his fee from \$3,000 to \$1,000.

Woodland Hills

○ Judge Mund reduced the fees of an attorney by almost 40%, from \$45,510 to \$27,890. Chapter 7 trustee Nancy Zamora and the U.S. Trustee objected to the work performed by the attorney concerning a disclosure statement submitted to the Court because it did not benefit the estate. (Handled by MaryAnne Wilsbacher)

a complaint under 11 U.S.C. § 727(a), setting forth the fraudulent concealment of information and seeking a denial of discharge. Panel trustee Jerry Namba filed a complaint seeking a constructive trust over moneys that the Fullams had received before filing bankruptcy. They had used this money to buy a new home and to make a preference payment to their daughter. To settle both actions, the Fullams agreed to pay \$140,000 to the trustee over several years. They also signed a stipulated judgment revoking their discharge to be filed in the event that they fail to make their required payments. (Handled by Marjorie Lakin Erickson)

⇒ In the case of Dianne Mandel-Miller, Judge Robles granted the U. S. Trustee's motion to approve the debtor's stipulated waiver of discharge after the U.S. Trustee filed a § 727 complaint to deny the debtor a discharge. The debtor had manipulated her hyphenated name and SSN in an attempt to avoid a 180-day prohibition against refiling ordered in a prior case. This was the debtor's third bankruptcy in which she attempted to delay foreclosure of her Beverly Hills residence by the secured lender.

⇒ Debtor Teresita Mata scheduled in excess of \$97,000 in unsecured debt, could not recall what was purchased, and made inconsistent statements regarding whether any property was sent to relatives in the Philippines. As a result of the U.S. Trustee's examination pertaining to eligibility for discharge, the debtor converted her case to a chapter 13 bankruptcy. (Handled by Russell Clementson)

⇒ Eiad Salameh, an unemployed engineer with only \$1,625 of personal property, filed a chapter 7 Petition on November 9, 2001 seeking to discharge \$617,267 of credit card debt for "Misc. Charges." Examined at his § 341(a) meeting by a U.S. Trustee attorney, Salameh clarified the information on his schedules as follows: 1) a former roommate, Walid Abulawi, stole over \$60,000 in appliances and furniture from Salameh's apartment; 2) Salameh lost over \$100,000 gambling; and 3) Salameh brought his pregnant wife and four children from Israel so that the fifth child could be born in the United States. Credit cards were used for living expenses, gifts, and calls to Israel. The U.S. Trustee subpoenaed American Express records and learned that in a 30-day period, Salameh

SECTION 727 AND SIMILAR ACTIONS

⇒ When Michael and Carol Dana Fullam filed chapter 7 Petitions, they failed to disclose stocks, employment income, property rental income, funds in an escrow account, business income, and valuable rights under a contract that they had entered into with The Coca-Cola Company. The U.S. Trustee filed

went to a different Costco Wholesale Store ("Costco") almost every day, spending a total of \$62,347.89. On June 4, 2000, he flew to London and made duty free purchases (including at the Caviar House) and on June 5, 2000, he made purchases at Damascus, Gold Souk, Dubai, United Arab Emirates. Subsequently, the U.S. Trustee contacted an investigator at Costco and learned that there was a scam involving the purchase of cigarettes that were eventually sold in the Middle East. Costco traced the membership number for the purchases and determined: 1) the purchases belonged to A & M Trading Company, a wholesaler; 2) the purchases were mainly for cigarettes; and 3) no sales taxes were paid. The U.S. Trustee also learned that the alleged former roommate, Walid Abulawi, was the principal of another company, W & A Wholesale, a producer and wholesaler of food, tobacco, and alcoholic beverages. Although the U.S. Trustee had a pending motion to dismiss, that motion was continued and § 727 complaint was filed based on false oaths, inability to explain the disposition of estate property, and failure to keep records. Salameh defaulted and on July 9, 2002, Judge Alberts entered the default judgment.

SUBSTANTIAL ABUSE FILINGS

⇒ Mariano Aguirre III sought to discharge \$56,765 of consumer debt. The U.S. Trustee filed a motion to dismiss the case for substantial abuse under § 707(b) on the grounds that the debtor had sufficient monthly disposable income to repay a substantial portion of his debt. The debtor obtained a continuance to determine the deficiency balance on his 1997 Eliminator boat. Even with the increased debt to \$85,961 based on the deficiency, the debtor acknowledged his ability to repay 41 percent of his consumer debt over 36 months if the court used the IRS Financial Collection standards and converted his case to a chapter 13 bankruptcy. The debtor eventually voluntarily dismissed his case.

⇒ Marion Burgin filed a chapter 7 bankruptcy. Advised of inconsistencies in her schedules by the U.S. Trustee, Burgin amended her schedules to

provide for \$794 in monthly disposable income. However, Burgin, who was represented by counsel, also increased her Schedule F second trust deed and debt from \$28,823 to \$119,588 based on an alleged mortgage deficiency for property quit claimed to her ex-spouse and for which she alleged she was liable under a second deed of trust. Investigation by the U.S. Trustee revealed a further wrinkle: there was no evidence of a foreclosure proceeding. In addition, Burgin had equity in the property. The U.S. Trustee filed a § 707(b) motion "backing-out" the so-called "mortgage deficiency." Burgin voluntarily converted her case to chapter 13, four days prior to the hearing on the motion.

⇒ Judge Barr granted the U.S. Trustee's motion to dismiss for substantial abuse under § 707(b) the chapter 7 case of Mario Campos, who sought to discharge \$24,036 in consumer debt. The U.S. Trustee's motion noted that there was no income listed for the debtor's non-filing spouse and suggested certain adjustments. The opposition to the motion disclosed: 1) the non-filing spouse did have income, 2) there was an additional \$400 per month in child care expenses, and 3) the income of the non-filing spouse was being used solely for her pre-marriage debts. In reply, the U.S. Trustee cited case law on the necessity to include a non-filing spouse's income in a substantial abuse analysis and argued that using the debtor's income for all common expenses was unfair to his creditors.

⇒ Judge Greenwald dismissed the case of Matt Charles Chassin, finding that the case was filed in substantial abuse of the Bankruptcy Code. The debtor had excess disposable income of \$1,500 per month which could pay 100% of his creditors within 36 months. The debtor's total liabilities were less than \$42,000. (Handled by MaryAnne Wilsbacher)

⇒ Edward and Deborah Coles filed chapter 7 bankruptcy seeking to discharge more than \$96,000 of unsecured debt, including an \$8,475 student loan and \$87,926 in credit card debt. Judge Barr granted the U.S. Trustee's motion to dismiss the case for substantial abuse since the debtors had a surplus income of over \$2,000 per month which could pay 85% of the credit card debt.

⇒ The U. S. Trustee filed a motion to dismiss the chapter 7 bankruptcy case of Charles and Cowana Emile based on their ability to fund a chapter 13 plan. The debtors earned gross income of \$146,000 and were paying monthly housing costs in excess of \$3,100. The debtors agreed to the dismissal of their case.

⇒ Paul Deavenport is a lawyer who filed a chapter 7 bankruptcy Petition in February 2001. Previously, in October of 2000, he falsified a bankruptcy Petition by substituting his own personal information and faxing the Petition to a creditor who was attempting to collect on a money judgment. The U.S. Trustee discovered that Deavenport's bankruptcy filing contained numerous false statements, including failure to disclose a prior bankruptcy filing and various assets. It took over 10 months to complete his § 341(a) examination. During the examinations, Deavenport testified falsely regarding his prior bankruptcy and his assets. He also physically threatened one of his creditors.

The U.S. Trustee filed a complaint to deny Deavenport his discharge pursuant to 11 U.S.C. § 727 and also filed a motion to dismiss his case with prejudice pursuant to 11 U.S.C. § 707(a) because the use of the falsified bankruptcy Petition did not provide grounds under § 727. The U.S. Trustee argued for dismissal pursuant to § 707(a) given the multitude of ways that Deavenport abused the system, and particularly because he is an attorney. Judge Riblet agreed and dismissed the case with prejudice on May 22, 2002. (Handled by Marjorie Lakin Erickson)

⇒ Finding substantial abuse, Judge Mund converted the Albert and Emily Estrella case to chapter 13. The debtors had between \$500 and \$1,200 per month in excess disposable income, which was sufficient to fund a plan. (Handled by MaryAnne Wilsbacher)

⇒ Gildardo and Maria Fuentes understated their income by approximately \$1,400 per month. Judge Goldberg granted the U.S. Trustee's motion to dismiss.

⇒ The debtors Moo Haeng Lee and Sook Hee Lee filed a chapter 7 bankruptcy listing \$127,000 in unsecured debt, mainly from credit cards, on their schedules. In addition, they stated at the meeting of creditors that they paid \$1,000 per month to support their adult children who no longer lived with them. The Court disallowed this expense and, after determining the debtors had sufficient excess income to fund a chapter 13 plan, dismissed the case.

⇒ The U.S. Trustee filed a § 707(b) motion to dismiss the chapter 7 bankruptcy filing of Teresa Malone based on her ability to pay 100% of her unsecured debt within 28 months. In response, the debtor substantially amended Schedule J, increasing her monthly expenses by \$1,166. She also admitted that the figures she had initially provided to her attorney were grossly inaccurate. Judge Alberts denied dismissal but imposed a \$1,000 sanction on the debtor because of the work her inaccurate papers had caused the U.S. Trustee in preparing the dismissal motion and reply brief.

⇒ With a reduction in expenses for a contribution to a retirement fund and other miscellaneous items, Reynaldo and Teresa Martinez had \$750 per month in disposable income and could fund a chapter 13 plan to pay 95% of scheduled claims. Judge Goldberg granted the U.S. Trustee's motion to dismiss.

⇒ Twig Mayo filed a chapter 7 Petition seeking to discharge \$81,091 of unsecured debt. The debtor worked as a credit manager earning \$100,000 per year. Just one month prior to filing, she purchased a 2002 BMW which had car payments of \$630 per month. Six months previously, she had bought a house. The chapter 7 trustee performed an analysis of the debtor's tax returns and concluded that she listed excessive income tax deductions on her bankruptcy income schedule. The debtor voluntarily converted her case to a chapter 13 bankruptcy.

⇒ Judge Greenwald dismissed the case of Barbara Nadeau with a 180-day prohibition against filing any other bankruptcy Petition in any jurisdiction. The debtor testified that she had lied on her Petition regarding her address in order to avoid her creditors. (Handled by MaryAnne Wilsbacher)

⇒ In the chapter 7 bankruptcy case of My C. Nguyen, his papers, on their face, contained many obvious errors and omissions, which resulted in an examination of Nguyen pursuant to FRBP 2004. The 2004 examination revealed that Nguyen was a day trader for the years 2000 and 2001 in which he used credit cards to amass approximately \$118,000 in stock market losses in 2000 alone. The U. S. Trustee filed a motion to dismiss based on failure to file complete and accurate schedules and bad faith. Nguyen did not respond to the motion nor appear at the hearing. Judge Barr dismissed the case.

⇒ The U.S. Trustee filed a motion to dismiss the bankruptcy case of Kirk and Terri Roseborough. The debtors had disposable income of \$1,500 when expenses for contributions to retirement and payments on a timeshare were disallowed and an allowance was made for the debtor returning to his full-time job. The debtor elected to convert to a chapter 13 bankruptcy.

⇒ Janet Meyer Stone was receiving disability payments when she filed for bankruptcy seeking to discharge \$33,914 of debt, but she subsequently returned to work earning \$85,000 per year. When the U.S. Trustee sought dismissal of the bankruptcy, the debtor argued unsuccessfully that she had relocated to Atlanta where living costs were higher, and she had increased expenses including a car payment for her unemployed significant other. Judge Ryan granted the U.S. Trustee's motion to dismiss the case for substantial abuse under 11 U.S.C. § 707(b).

⇒ Judge Alberts granted the U.S. Trustee's motion to dismiss for substantial abuse the chapter 7 case of Tuong Tang, who sought to discharge \$153,544 of credit card debt. Approximately \$100,000 of this debt was incurred during the last two years from gambling and stock market investments.

⇒ Gabriel Valdez, who sought to discharge \$29,903 of consumer debt, did not oppose the U.S. Trustee's motion to dismiss for substantial abuse, which Judge Alberts granted. Based on the debtor's monthly disposable income, the debtor could repay 93 percent of his debt within 60 months.

⇒ The U.S. Trustee filed a motion for substantial abuse in the case of Robert Wichman. The debtor showed take home income of \$3,900 a month and substantially inflated expenses of \$4,000 per month. After reduction of expenses, the debtor's disposable income totaled \$995 per month, enough to pay 100% of his scheduled debt. The debtor consented to converting to a chapter 13 bankruptcy.

⇒ The debtors, Yvonne & David Quezada, indicated \$6,000 monthly take-home pay on their schedules and a corresponding amount for expenses, which included payments for a loan taken from retirement funds and car payments on a vehicle which the debtors were to surrender. Given that the debtors had \$1,370 per month in disposable income after these two items were removed from expenses, Judge Jury granted the U.S. Trustee's motion to dismiss the case.

REPEAT FILERS

⇒ Maryam Edrisi filed a chapter 7 bankruptcy seeking to discharge \$60,700 of unsecured debt. However, she did not disclose a prior dismissed bankruptcy filed on April 4, 2001. In addition, her Schedule B in both bankruptcies included identical information, including cash of \$473 and a checking account balance of \$297. Edrisi was assisted in both bankruptcies by petition preparer "Michael Goldberg, Juris Doctor, Cum Laude." The U.S. Trustee filed a motion to dismiss with prejudice pursuant to § 707(a) and Local Bankruptcy Rule 1015-2 based on the facts and Edrisi's failure to file a response. However, due to Edrisi's apparent lack of understanding of the bankruptcy process, the U.S. Trustee modified the motion for dismissal without prejudice. Judge Alberts granted the motion.

⇒ Treneice H. Edwards and her husband, Robert John Edwards, filed a chapter 7 Petition seeking to discharge about \$50,000 of debt. Ms. Edwards disclosed four prior Los Angeles chapter 13 cases she had filed during 1997 to 1999. She indicated all had been dismissed without a bar to refiling. In fact, however, one case was discharged and another

resulted in a 180-day bar to refiling. Judge Ryan granted the U.S. Trustee's motion to dismiss her current case with prejudice in order to bar her from receiving a discharge in a later case of any of her debts or obligations existing at the time of this filing.

⇒ Charles Hetterick filed a chapter 7 Petition seeking to discharge \$144,000 of unsecured debt. His failure to disclose three out of five of his previous bankruptcies prompted further investigation by the U.S. Trustee. Although not disclosed in his bankruptcy papers, public records revealed that Hetterick owned real property in Wisconsin that he transferred within a year of the filing of his latest bankruptcy. The U.S. Trustee filed a motion to dismiss Hetterick's case with prejudice under 11 U.S.C. § 707(a), § 349 and Local Bankruptcy Rule 1015-2 so that he could never discharge any of his debts existing as of the Petition date. Although he did not file a response, at the hearing on the motion Hetterick appeared with his counsel and argued for leniency. In lieu of the harsh remedy provided by dismissal with prejudice, Hetterick agreed to waive his discharge thus preserving his ability to seek a discharge in a future bankruptcy.

⇒ Judge Alberts granted the U.S. Trustee's motion to dismiss the chapter 7 case of Denise Jones with prejudice pursuant to § 707(a), § 349(a) and Local Bankruptcy Rule 1015-2, barring her from receiving a discharge in a later case of her debts or obligations existing at the time of the current filing.

⇒ Rufino Orlando Martinez filed a chapter 7 bankruptcy but failed to disclose a prior chapter 7 case filed less than two years previously for which he received a discharge. The U.S. Trustee filed a motion to dismiss under § 707(a) and Local Bankruptcy Rule 1015-2. Judge Barr dismissed the case.

⇒ Judge Lax dismissed the chapter 7 case of Alan Newman because the debtor had received a discharge on September 12, 1996 which was within six years of the current filing. The dismissal included a prohibition against refiling another bankruptcy Petition under chapter 7 until on or after September 13, 2002. (Handled by MaryAnne Wilsbacher)

⇒ In the case of Arturo Osorio, Osorio failed to disclose the exact filing date of a prior bankruptcy case which was discharged within six years of the current case, making the debtor ineligible for a discharge. The debtor converted the case to Chapter 13 following the § 341(a) examination. (Handled by Russell Clementson)

⇒ Michael Perfecto filed a chapter 13 Petition and did not disclose at least three prior bankruptcies filed in Riverside, San Bernardino, and Los Angeles. Moreover, he used different SSNs for the prior filings. Judge Alberts granted the U.S. Trustee's motion to dismiss the case with prejudice, barring Perfecto from discharging any debts existing as of the Petition date.

⇒ Svetalana and Gary Yessayan filed a chapter 7 bankruptcy in April 2002. The debtors failed to disclose a previous bankruptcy filed by Svetalana in March 2001 in which she received a discharge, in violation of Local Bankruptcy Rule 1015-2. Judge Ryan granted the U.S. Trustee's motion to dismiss.

CHAPTER 11 MONITORING

⇒ Judge Greenwald found that Andrew Cohen had filed his chapter 11 case in bad faith and dismissed the case with a 180-day prohibition against refiling under any chapter. This was the fourth bankruptcy Petition filed in connection with the debtor in nine months. Also, the debtor failed to comply with the U.S. Trustee's reporting requirements, the Court's prior Order requiring a report on the status of the case, and the requirements for accurate schedules and statements. (Handled by MaryAnne Wilsbacher)



⇒ On April 22, 2002, Judge Bluebond dismissed the chapter 11 case of John Ellis with a 180-day bar against refiling and sanctioned the debtor \$2,500 for bad faith conduct. A secured creditor had obtained a Relief from Stay Order in a previous bankruptcy filing of the debtor, as a result of which the creditor was able to obtain an unlawful detainer judgment in a state court action. Ellis had the

judgment overturned by the U.S. Bankruptcy Court for violation of the automatic stay in the new case. He did not, however, serve the secured creditor or the U.S. Trustee with his motion to void the judgment. He also failed to inform the Bankruptcy Court that the Order from the previous bankruptcy case allowed the creditor's unlawful detainer action to proceed despite any future bankruptcy cases. The secured creditor filed a motion requesting that the Bankruptcy Court reconsider its Order voiding the judgment. The U.S. Trustee joined in the motion, also seeking sanctions and dismissal of the case for bad faith. In addition to the non-disclosure of the creditor's prior Relief From Stay Order, the debtor had not disclosed at least six prior related bankruptcy cases and had thwarted the foreclosure and unlawful detainer actions of his two creditors through his multiple filings. (Handled by Joe Caceres)

⇒ Mission Medical Associates, an HMO managed by its doctors, provided services at a fixed capitation rate for insurance companies and also for private individuals. The debtor was one of the largest health providers in San Luis Obispo and the case was covered extensively in the local press. It filed a chapter 11 bankruptcy on January 7, 2002. A plan and disclosure statement were filed with the case. Working with creditor committee's counsel, the U. S. Trustee successfully argued that the projections contained in the disclosure statement did not appear to have been based on either the pre-Petition or post-Petition operations. Subsequently, the U.S. Trustee supported the committee's motion to convert the case to chapter 7 on the grounds that the debtor was continuing to incur very large losses with no end in sight. Judge Riblet ordered the appointment of an examiner to test whether the projections were accurate and whether there was any chance of reorganization. After an extensive examination, the examiner concluded that the case probably was administratively insolvent and advised converting the case to a chapter 7. Based on the examiner's report and the finding of some disturbing mismanagement, including extensive unauthorized payments, as well as argument during a hearing by the U.S. Trustee and committee counsel, the Court ordered the case converted on May 22, 2002. (Handled by Marjorie Lakin Erickson)

CRIMINAL CASES

The Bussell Trial

Dr. John Bussell, 55, and his wife, **Dr. Letantia Bussell**, 53, were tried on charges of bankruptcy fraud and tax evasion in an eleven-week jury trial before Judge Stotler in Santa Ana. On February 6, 2002, Dr. Letantia Bussell, a dermatologist practicing in Beverly Hills, was convicted of conspiracy to commit bankruptcy fraud, concealment of assets and false statements in bankruptcy, and tax evasion. Dr. John Bussell, an anesthesiologist, committed suicide while the jury was deliberating his case. **Jeffrey Sherman**, one of the Bussells' lawyers and a certified public accountant with the Tax Consulting Group, pleaded guilty on February 1, 2001 to charges of conspiracy to commit bankruptcy fraud and aiding and abetting tax evasion. **Robert V. Beaudry**, another attorney who represented the Bussells, prior to trial, pleaded guilty to four tax charges. The criminal indictment charged the Bussells and Jeffrey Sherman with conspiring to conceal the Bussells' ownership and control of their dermatology practice, their interest in approximately one million dollars in diverted income from the practice, and their equity in a condominium at the Stein Ericksen Lodge in Park City, Utah. The indictment also charged John Bussell with laundering the proceeds of the bankruptcy fraud by transferring more than \$1 million into a nominee brokerage account. The Bussells, who had discharged over \$1 million in tax debt through their fraudulent bankruptcy, were also charged with tax evasion and with filing fraudulent corporate income tax returns for one of the nominee corporations used to hide the Bussells' ownership interest in the dermatology practice.

Over 35 witnesses testified for the United States government, including Terri Andersen, Assistant U.S. Trustee, and Theodor C. Albert of Albert, Weiland & Golden, LLP, Chapter 7 Panel Trustee in Santa Ana.

Convictions

On June 25, 2002, Nathaniel Levi Spencer pleaded guilty to two counts of making false statements in

bankruptcy, for failing to list prior bankruptcy filings, and for using a false SSN in a bankruptcy filing. The Honorable Christina A. Snyder is scheduled to sentence Spencer on September 30, 2002. FBI Special Agent Tom Reitz investigated and AUSA Robert Kennan and SAUSA Sandy Klein prosecuted the case.

Sentencings

Judge Lew sentenced **Hossein Dallalbashi, a.k.a., Hossein D. Esfahani and Javier Planck Magnet**, to two years probation on April 15, 2002. Dallalbashi used a false SSN in a bankruptcy filing, filed under a fictitious name, and did not disclose his other aliases.



Judge Real sentenced **Miguel Diaz** on May 6, 2002 to five years probation and 100 hours of community service for using a false SSN in a bankruptcy.

On June 3, 2002, Judge Morrow sentenced **Michael Lowe** to five years probation and a \$10,000 fine. Lowe falsified his bankruptcy documents by substantially understating his income.

Gregory Lynn Sampson used his thirteen-year-old son's identifying information, including his son's SSN, in Sampson's bankruptcy filing. On June 26, 2002, Judge Rafeedie sentenced him to a fine of \$3,000 and two-years probation.

ASSISTANT U.S. ATTORNEY PROFILE

Assistant U.S. Attorney Robert J. Keenan has a blunt warning for those who would use bankruptcies to further fraudulent schemes or other criminal conduct in Orange County, California: "Don't!" This is not an empty threat. Mr. Keenan recently concluded his first case as the office's Bankruptcy Fraud Coordinator. In the case of United States v. Nathaniel Levi Spencer, Jr., No. SA CR 02-123-CAS,

the defendant entered into a plea agreement negotiated by Mr. Keenan which related to the defendant's conduct in two Orange County bankruptcy filings. Among other acts, the defendant did not disclose prior cases filed by him and used a false SSN in at least one filing. The sentencing is scheduled for September 2002. Spencer faces possible incarceration as well as restitution in the amount of approximately \$36,000.

Bankruptcy was the furthest thing from Mr. Keenan's mind when he was at El Dorado High School ("Home of the Golden Hawks") in Placentia, California. He became interested in prosecution while attending California State University, Fullerton. After graduating in 1987, Mr. Keenan attended USC Law School. Following graduation from the law school in 1990, he accepted a clerkship with U.S. District Court Judge Alicemarie H. Stotler. In October 1991, he went to work for the Los Angeles office of Sidley & Austin, concentrating on general business litigation. Wanting to get back to his Orange County roots, he joined Morrison & Foerster at their Irvine office in October 1995 and worked in the area of general business litigation and labor and employment law. Occasional involvement with bankruptcy cases both at Sidley & Austin and Morrison & Foerster piqued his interest in the field.

In January 2001, Mr. Keenan joined the U.S. Attorney's office in Orange County, California. How Mr. Keenan became Bankruptcy Fraud Coordinator for the office is an interesting story. Recently retired Orange County Bankruptcy Judge Lynne Riddle was at a legal function and, to use her own words, she "cornered" John Gordon who was then heading the U.S. Attorney's office. She highlighted the need to crack down more on bankruptcy abuse. Mr. Gordon then contacted Orange County Chief AUSA, John Hueston, who asked for volunteers for the project. Mr. Keenan volunteered. Why? In addition to the importance of bankruptcy to the economy, he was fascinated, and perturbed, by the fraudulent schemes that people devised using bankruptcies - mortgage scams, bust-outs and the like. As he puts it, "[t]he

chutzpah of some bankruptcy cheats is amazing." He is also the office's Civil Rights Crimes Coordinator, and has been involved in some interesting post-9/11 cases.

Mr. Keenan currently has about 15 active bankruptcy fraud cases for which he brings in local FBI agents to perform additional investigative work. He has also met with Secret Service agents for possible involvement in bankruptcy crimes investigations. Mr. Keenan is looking forward to future criminal prosecutions, as are we at the Office of the U.S. Trustee.

COMMUNITY OUTREACH AND EDUCATION PROGRAMS

Consumer Debtor Education Brown Bag Meetings



We are pleased with the positive feedback and the number of attendees, ranging from 65 to 110 attendees per program, the Office of the U.S. Trustee has had at its continuing education program for consumer debtor attorneys. These brown bag luncheons are free and take place from noon to 1:00 p.m. in the 341(a) meeting rooms of the Los Angeles U.S. Trustee's Office. The speakers are a mix of consumer debtor counsel, chapter 7 panel trustees, chapter 13 standing trustees, bankruptcy judges, and members of the U.S. Trustee staff. The Los Angeles Bankruptcy Forum has agreed to co-sponsor the program which permits us to offer one hour of MCLE credit to the participants. The focus of the program is on improving consumer representation. The following programs have been held so far:

- S ***What to File? Should Your Client Be In A Chapter 7 or Chapter 13?***
- S ***Advising Clients On Non-Dischargeable Debts***
- S ***Post-Confirmation Issues in Chapter 13 Cases***
- S ***Exempting Pensions and IRAs In Bankruptcy Cases***

- S ***A Quick Walk Through the Local Rules and A Judge's Perspective on Reaffirmation Agreements***
- S ***Hot Topics in Chapter 13***
- S ***The 2002 Revisions to CCP § 703 and § 704 Exemptions***
- S ***How to Avoid a § 707(b) Motion to Dismiss***
- S ***When Does the Use of Paraprofessionals Turn Into the Unauthorized Practice of Law?***

Because of our office relocation, there will be no programs for the months of August and September 2002. October's program will be the Bankruptcy Petition Preparer Guidelines Program noted earlier. A program will be held in November. As soon as programs are scheduled, the Office of the U.S. Trustee's web site, at <http://www.usdoj.gov/ust/r16>, will provide the details.

If you would like to be on our e-mail address list for future programs, whether or not you are currently on our mailing list, please send your e-mail address to Martha.Medina2@usdoj.gov. We intend to commence e-mailing notification of the programs in early 2003 at which time we may cease sending notification of the programs by regular mail.

Identity Theft

On June 29, 2002, Christine Cartwright, Fraud Coordinator with the Office of the U.S. Trustee, spoke on "Identity Theft" at the request of U.S. Congresswoman Hilda Solis. The event was the "Homeowner & Renter Resource Fair" at the El Sereno Senior Citizen Center. Friends of the OUST, Ben Diehl, attorney with Bet Tzedek Legal Services, and Hilda Weintraub, Deputy District Attorney, also presented a panel discussion on "Anti-predatory Lending and Real Estate Fraud."

Chapter 11 Practice: Notices and Guides - How to Comply with the U.S. Trustee's Requirements

1. On Wednesday, April 24, 2002, the Office of the U.S. Trustee was featured at a panel discussion in West Los Angeles jointly sponsored by the Los Angeles Paralegal Association and the Beverly Hills Bar Association. The panel, moderated by

Joe Caceres, discussed several topics of note, including U.S. Trustee compliance and fees, employment applications, and financial reports. Speakers from the U.S. Trustee's Office included Trial Attorney Joe Caceres, Bankruptcy Analysts Wendy Sadovnick, Sam Lor, Yolanda Cannon and Gary Baddin, and Paralegal Specialist Al Cooper.

2. On July 2, 2002, Bankruptcy Analyst Terry Biers spoke to paralegal students at Orange Coast Community College regarding "The U.S. Trustee's role in Chapter 11 Cases" and introduced the updated Chapter 11 Notices and Guides.

✓ **Please note that the Chapter 11 Notices and Guides are now available on the Office of the U. S. Trustee web site for Region 16 at: www.usdoj.gov/ust/r16/forms.**



Field Trip for Students

Trial Attorney MaryAnne Wilsbacher arranged an all-day program for James Monroe High School students on May 14, 2002.

The morning session included tours of the U.S. Trustee's Woodland Hills office, the San Fernando Valley College of Law, and the San Fernando Division of the U.S. Bankruptcy Court for the Central District of California. In addition, Ms. Wilsbacher and attorney Andy Goodman of Greenberg & Bass gave a two-hour presentation. Topics included an overview of the bankruptcy process, financial responsibility, and the function and role of the U.S. Trustee's office.

In the afternoon, the students met with chapter 13 trustee Elizabeth Rojas and observed Judge Geraldine Mund's Chapter 13 confirmation hearing calendar. Following the calendar, Judge Mund held an informal question and answer session with the students.

"Dear Sherlock:"

(A column for fraud-fighters seeking advice)



What is the responsibility of an attorney who is retained by a client to claim assets in the death of a parent? These assets were not listed on the client's bankruptcy. The bankruptcy is closed three weeks prior to decedent's death. The client held a medical power-of-attorney for the parent. If the attorney has knowledge of these facts, what obligation does he/she have with respect to the misstatements and items concealed from the bankruptcy?

Signed,

In a Quandary

Dear Quandary:

This, of course, is really a question of legal ethics, rather than one of bankruptcy law. Here are some guidelines that you may try to apply to your situation.

11 U.S.C. § 541(a)(5) includes within the definition of property of the estate, "Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of filing the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date – (A) by bequest, devise, or inheritance."

Accordingly, if the parent's death occurred within 180 days of the date that the client filed bankruptcy, the assets would be property of the estate. In that case, the client has a clear duty to report the assets to his bankruptcy trustee. (The client's medical power of attorney does not affect this duty.)

That leads us to the question of the attorney's responsibility for reporting the assets. In

seeking to answer this question, I am relying primarily on California Ethics Opinion 1996-146, which can be found at 1996 WL 664843. I also checked with the State Bar Ethics Hotline, which further referred me to California Ethics Opinion 1983-74 and 1990-2, along with California Business and Professions Code §§ 6068 (d) and (e) and Ethics Rules 3-500 and 3-700.

A review of the California Rules of Professional Conduct shows that California Business and Professions Code § 6068(e) requires an attorney to keep a client's communications in strict confidence. Thus it appears that the attorney cannot report the information about the assets to the court or trustee without the client's consent, particularly since it appears from the question that the attorney has never been employed in connection with the bankruptcy.

Arguably, here, obtaining the assets for the client when the attorney knows the assets belong to the bankruptcy trustee would constitute helping the client to perpetrate a fraud. Under these circumstances, the attorney is required to advise the client that the conduct is illegal. The attorney is also required to avoid furthering the fraud in any way. Therefore, if the client refuses to report the asset, the attorney must withdraw or refuse to represent the client.

There are, of course, many nuances presented by such questions and no attorney should rely on this response when dealing with a specific issue without first checking with the State Bar's Ethics Hotline. The Hotline, at (800)238-4427, will not give you legal advice, but will point you to the Code sections and Rules to consider, as well as relevant Ethics Opinions.

Sherlock

Please e-mail your inquiries regarding fraud and abuse issues to Sherlock, c/o: www.Marjorie.Gibson@usdoj.gov